

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

In Re: Ruling Request

Refer Reply To:  
CC:PSI:B04  
PLR-144796-13

Date:  
April 15, 2014

### Legend:

Taxpayer =  
Year =  
Trust 1 =

Trust 2 =

X =  
Y =

Dear :

This letter responds to your personal representative's letter of October 28, 2013, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to transfers to two trusts.

In Year, Taxpayer established two irrevocable trusts, Trust 1 and Trust 2. Trust 1 and Trust 2 have GST potential. Also in Year, Taxpayer transferred property he valued at \$X to each of Trust 1 and Trust 2. Taxpayer retained a tax professional to prepare his Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the transfers. In preparing the Form 709, however, the tax professional failed to allocate or advise Taxpayer to allocate his GST exemption to the transfers. Taxpayer represents that he has \$Y of GST exemption available to allocate to these transfers.

Taxpayer is requesting an extension of time under § 2642(g) and § 301.9100-3 to allocate GST exemption to the Year transfers, effective as of the date of the transfers.

## Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax imposed by § 2601 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum Federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), as in effect for the year at issue, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000, which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2642(b)(1), as in effect for the year at issue, provides that, if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) or is deemed to be made under § 2632(b)(1), the value of such property for purposes of § 2642(a) is its value for purposes of chapter 12 and the allocation will be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary will by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations will include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary will take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) is treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to allocate his available GST exemption to the Year transfers to Trust 1 and Trust 2. The allocation will be effective as of the date of the transfers and the fair market value of the transfers as determined for Federal gift tax purposes will be used to determine the amount of GST exemption to be allocated to Trust 1 and Trust 2.

These allocations should be made on a supplemental Form 709 for Year. The Form 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: